

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DAVID TROUPE,

Plaintiff,

v.

KENNETH R. BRODHEAD, LINDA W.  
BELANGER, and KEVIN WALKER,

Defendants.

No. CV-13-5028-EFS

**ORDER STRIKING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

On August 6, 2013, the Court held a telephonic hearing on *pro se* Plaintiff David Troupe's Motion for a Temporary Restraining Order and Preliminary Injunction, ECF No. 16. Plaintiff and Amy Clemmons, who is counsel for Defendants, participated. After reviewing the filings and relevant authority and hearing oral argument, the Court was fully informed. This Order memorializes and supplements the Court's oral order striking in part (temporary-restraining-order request) and denying in part (preliminary-injunction request) Plaintiff's motion.

**A. Background**

Plaintiff received a twenty-year imprisonment sentence for three counts of robbery. ECF No. 12, Attach. 5b. He has served approximately 15 years, including time at Stafford Creek Corrections Center (SCCC) and the Walla Walla State Penitentiary (WWSP). Plaintiff, who has a history of engaging in self-harm, has been

1 diagnosed with posttraumatic stress disorder, recurring major  
2 depression, inability to control impulses, and borderline personality  
3 disorder. ECF No. 30, Attach. 7. When housed at SCCC, Plaintiff  
4 removed stitches in his leg to inflict self-harm and attempted to  
5 break a toilet from the wall. *Id.*, Attach. 3a. SCCC placed him in  
6 prolonged restraints. *Id.* Since approximately July 23, 2010,  
7 Plaintiff has been housed at WWSP in the Intensive Management Unit-  
8 North (IMU-N) with a no-razor restriction. *Id.* WWSP requires an  
9 inmate to have ninety days of good behavior before a transfer request  
10 will be considered.

11 On August 23, 2010, Plaintiff cut his left wrist. ECF No. 12,  
12 Attach. 5b. At that time, Plaintiff had approximately 154  
13 infractions during his then-twelve years of incarceration. *Id.*

14 In a September 14, 2010 email, Defendant Linda Belanger states,  
15 Congratulations! Might be a little premature but Troupe  
16 said that he was going to come to IMU to "get his 90 days  
17 over with." Chris, it would appear that the little guy did  
18 think his situation over and decided that having his time  
19 not count in the HSB was not something he wanted to do. I  
20 don't think he was having much fun there and came back and  
21 told Walker that he was done. Good job and thank you for  
22 the support.  
23 ECF No. 30, Attach. 6c. Defendant Belanger's email "signature" was  
24 "Speak softly and carry a big stick; you will go far." *Id.*

25 On September 27, 2010, Defendant Belanger documented that  
26 Plaintiff was picking at the sutured laceration on his lower leg  
because he was unhappy that he could not immediately go to the Mental  
Health Unit (MHU) for a "time out." ECF No. 28, Attach. A at 5.  
Defendant Belanger advised Plaintiff that he needed to wait until the

1 MHU had an open seclusion room. *Id.* Plaintiff was unhappy about the  
2 wait and so continued to remove all of the sutures and made a new  
3 laceration on his leg as well. *Id.*

4 In an October 7, 2010 "Week in Review" email, Amy Evenson, a  
5 psychologist associate with the IMU-N, discussed the status of  
6 inmates who were likely to require more staff attention over the  
7 weekend. ECF No. 30, Attach. 6a. Plaintiff was included on this  
8 inmate list. *Id.* Ms. Evenson states:

9 Well, Mr. Munchkin [Plaintiff] has FINALLY decided to man  
10 up and start his IMS program with us in the North. . . .  
11 The CUS, Sergeant, and myself are in the midst of  
12 developing his 'contract' and if he does request mental  
13 health assistance over the weekend, this might be a good  
14 thing to mention (wink, wink) to deter him from requesting  
15 to go to the MHU, i.e., going there could jeopardize the  
16 "good parts" of the contract for him.

17 *Id.*

18 On November 8, 2010, Plaintiff filed an emergency grievance  
19 claiming that he was sexually assaulted and harassed by Defendant  
20 Brodhead on November 3, 2010. ECF No. 12, Attach. 1. On November 9,  
21 2010, Plaintiff filed a grievance complaining that Defendant Belanger  
22 failed to keep Officer Brodhead away from him. *Id.*, Attach. 4.  
23 Plaintiff was advised that his grievance would be processed but that  
24 he could also contact mental health to assist him with dealing with  
25 stress. *Id.*

26 On November 11, 2010, Plaintiff filed a grievance wherein he  
stated that, notwithstanding his complaint of sexual harassment and  
assault against Defendant Brodhead, Defendant Brodhead continued to  
contact and intimidate Plaintiff. *Id.*, Attach. B; ECF No. 28,

1 Attach. A at 10. Plaintiff was advised that the sexual harassment  
2 issue was being handled via the Prison Rape Elimination Act (PREA)  
3 process, and that the intimidation issue would be considered with a  
4 previously-filed grievance. ECF No. 28, Attach. A at 10; ECF No. 12,  
5 Attach. B.

6 On November 16, 2010, Plaintiff filed a grievance contending  
7 that Defendant Brodhead deliberately worked extra hours in IMU-N in  
8 order to harass Plaintiff. ECF No. 28, Attach. A at 13. The  
9 grievance coordinator found Plaintiff's concern was unsupported as  
10 Defendant Brodhead was working his assigned schedule. *Id.*

11 On November 18, 2010, Plaintiff intentionally cut his leg with  
12 his fingernail. *Id.*, Attach. A at 7. He advised the mental health  
13 counselor that he would continue to harm himself and assault staff  
14 until he was transferred to SCCC IMU. *Id.*

15 On November 19, 2010, Plaintiff filed a grievance wherein he 1)  
16 complained that Defendant Belanger allowed Defendant Brodhead to  
17 continue to harass him, and 2) requested that Defendant Brodhead not  
18 contact him. ECF No. 28, Attach. A at 9. Officer Charles Pease  
19 investigated the grievance and found that Defendant Belanger had  
20 appropriately cautioned Plaintiff that in order to get his requested  
21 90-day rotation to another IMU he needed to positively program at  
22 IMU-N for 90 days. *Id.* Officer Pease also advised Plaintiff that  
23 the allegation regarding Defendant Brodhead was being handled through  
24 a different investigation. *Id.*

25 Also on November 19, 2010, a Psychology Suicide Risk Assessment  
26 was performed by Psychologist Mary Jo Moeschi. ECF No. 12, Attach.

1 5a. Dr. Moeschi addressed Plaintiff's continued threats of self-  
2 harm. *Id.* She states Plaintiff "is very bright, and when I  
3 interviewed him he indicated that he was very frustrated because he  
4 has been here approximately 120 days." *Id.* Dr. Moeschi called  
5 Defendant Belanger to clarify Plaintiff's status at IMU-N. *Id.*  
6 Defendant Belanger relayed that because Plaintiff engaged in self-  
7 harm he would have to restart his 90-day rotation. *Id.* Dr. Moeschi  
8 relayed this information to Rick Cross, RMHPM. Until Mr. Cross made  
9 a decision, Dr. Moeschi recommended continuing self-harm precautions  
10 and regularly evaluate Plaintiff. *Id.*

11 On November 24, 2010, Plaintiff filed a grievance contending  
12 that Defendant Belanger's decision to deny transfer to a different  
13 IMU violated Department of Corrections (DOC) policy. ECF No. 28,  
14 Attach. A at 14. Plaintiff was advised that transfer decisions are  
15 not grieveable. *Id.*

16 On November 29, 2010, Plaintiff grieved that he was  
17 inappropriately given medication and that his modifications were not  
18 supported. *Id.*, Attach. A at 15. He was advised that his  
19 modifications were reviewed daily by supervising staff, and they were  
20 to expire on November 30, 2010. *Id.*

21 On December 17, 2010, Plaintiff filed a grievance complaining  
22 that Defendant Belanger 1) provided him with contrary information as  
23 to why his transfer requests were being denied, and 2) changed  
24 Defendant Brodhead's work schedule so that he was around Plaintiff  
25 five days a week. *Id.*, Attach. A at 8. DOC Investigator Katelyn  
26 Daugherty reviewed the grievance and responded in part, "It appears

1 that you may be attempting to manipulate staff in order to meet your  
2 goal of transferring to another Intensive Management Unit. In order  
3 to be eligible for a transfer to another IMU, you will need to  
4 stabilize by demonstrating a willingness to refrain from engaging in  
5 self-harm behaviors." *Id.*

6 In December 2010, Plaintiff advised WSP health care that he  
7 would begin a hunger strike if paperwork was not submitted to  
8 transfer him to another IMU. ECF No. 28, Attach. A at 7. By  
9 December 18, 2010, Plaintiff missed nine consecutive meals. *Id.*,  
10 Attach. A at 6. As a result, a vitals, height, and weight check was  
11 done by medical staff on December 18, 2010. *Id.* It was noticed that  
12 Plaintiff had cut a 4-inch wound on his left front shin. *Id.*  
13 Plaintiff was taken to the trauma room where he was treated for his  
14 injuries and placed on a four-point table to protect him from harming  
15 himself. *Id.* Plaintiff stayed in MHU for the weekend.

16 On December 20, 2010, after Plaintiff returned from MHU,  
17 Defendant Walker and Officer Pease conversed with Plaintiff in his  
18 IMU-N cell regarding his need to improve his behavior in order to  
19 transfer to a different IMU. ECF No. 30, Attach. 3b. During this  
20 discussion, Plaintiff pulled a broken razor blade from his upper lip  
21 and passed it to the officers. *Id.* Plaintiff advised that he got  
22 the razor blade from a staff member but would not name the staffer.  
23 *Id.*; ECF No. 28, Attach. A at 21. Pictures of the razor blade were  
24 taken, and it was ascertained that the razor was not issued from the  
25 WSP hospital or IMU units. ECF No. 30, Attach. 3c.

1 On December 24, 2010, Plaintiff filed an emergency grievance  
2 complaining that Officer Brodhead, rather than the three other  
3 officers who were present, strip searched him. ECF No. 12, Attach.  
4 8. This grievance was forwarded to the grievance coordinator. *Id.*

5 On December 27, 2010, Plaintiff filed an emergency grievance  
6 that Officer Brodhead continued to taunt and harass him. ECF No. 28,  
7 Attach. A at 20. Plaintiff was told that his grievance did not  
8 qualify as an emergency grievance and that it would be processed as a  
9 normal grievance. *Id.*

10 On December 28, 2010, Defendant Brodhead filed an Infraction  
11 Report as to Plaintiff's December 27, 2010 refusal to open his mouth  
12 so that Defendant Brodhead could confirm that the given medicine was  
13 in Plaintiff's mouth. ECF No. 12, Attach. 11.

14 On January 4, 2011, Plaintiff filed a Level II appeal wherein he  
15 complained that it took two hours for mental health staff to see him  
16 and that he felt unsafe at IMU-N under the supervision of Defendant  
17 Belanger. ECF No. 28, Attach. A at 16. On January 31, 2011,  
18 Superintendent Mark Kucza apologized to Plaintiff for it taking two  
19 hours for the mental health staff to come talk to him, and advised  
20 that he addressed with staff the need for quicker response time. *Id.*

21 Also, on January 4, 2011, Plaintiff filed an emergency grievance  
22 complaining that Officer Brodhead engaged in demeaning conduct toward  
23 him. ECF No. 12, Attach. 12. The grievance coordinator advised that  
24 the grievance did not qualify as an emergency grievance, offenders do  
25 not get to choose which staff performs a duty, and the MHU will be  
26 notified per his request. *Id.*

1 On January 6, 2011, Plaintiff signed an affidavit, which stated  
2 that Defendant Brodhead sexually harassed him on October 19, 2010,  
3 and then sexually assaulted him on November 3, 2010. ECF No. 30,  
4 Attach. 4. Plaintiff also declared that Defendant Brodhead provided  
5 him with a razor blade during the second week of November 2010 in  
6 order for Plaintiff to kill himself. *Id.*

7 On January 8, 2011, Plaintiff cut his leg because he was upset  
8 at the booth officer whom he felt was disrespecting him. ECF No. 30,  
9 Attach. 7. Psychologist Associate Casey Potts prepared a report of  
10 the incident. *Id.* Potts discussed with Plaintiff other methods of  
11 relieving stress, and Plaintiff appeared familiar with these options.  
12 *Id.* Plaintiff volunteered not to be disruptive so that he could  
13 remain at IMU-N rather than be placed in MHU. *Id.* After the site  
14 nurse determined that the scratch was superficial, staff agreed that  
15 Plaintiff could stay in IMU-N. *Id.*

16 On January 12, 2011, Plaintiff filed a "kite" directed to  
17 Defendant Belanger inquiring why she failed to question, investigate,  
18 or respond to his grievance that Defendant Brodhead gave him a razor  
19 blade, stating in part, "No response. No questions. No  
20 investigation. A MAJOR breach of security and you ignore it?" ECF  
21 No. 12, Attach. 13b. Defendant Belanger responded, "No questions no  
22 response, no investigation. You have shotgunned these allegations  
23 out elsewhere, thus no action from me." *Id.*

24 Also on January 12, 2011, Plaintiff filed a Level II appeal of  
25 his December 29, 2010 grievance, ECF No. 28, Attach. A at 19,  
26 regarding Defendant Brodhead's ability to strip search Plaintiff when



1 Defendant Brodhead was under investigation for sexually assaulting  
2 him and giving him a razor blade. *Id.*, Attach. A at 18. The  
3 grievance coordinator denied the grievance because Plaintiff does not  
4 get to choose who performs searches and Defendant Brodhead was  
5 accompanied by other staff. ECF No. 28, Attach. A at 19.  
6 Superintendent Kucza responded on January 25, 2011, stating that  
7 staff is assigned tasks by their supervisors and because Plaintiff is  
8 in a maximum-custody environment activities are strictly controlled.  
9 *Id.*, Attach. A at 18. Superintendent Kucza also advised that the  
10 sexual-assault and razor-blade allegations were being investigated in  
11 the PREA process. *Id.*

12 On February 8, 2011, Plaintiff sought leave to file a Level II  
13 appeal concerning the lack of response to his grievance that  
14 Defendant Belanger told him that he was going to "rot" at WSP IMU-N.  
15 ECF No. 12, Attach. 14. Plaintiff was given leave to file a Level II  
16 appeal. *Id.* In response to the Level II appeal, OCO Deputy  
17 Secretary/Designee stated, "It is unfortunate that this incident  
18 occurred. The Department of Corrections expects staff to interact  
19 with offenders in a professional manner at all times." ECF No. 30,  
20 Attach. 2a; see also *id.*, Attach. 2b (Ronald Knight admonished  
21 Defendant Belanger that her interactions with Plaintiff must be  
22 professional and acceptable.). Plaintiff's transfer request to IMU-  
23 South or another facility was denied; Plaintiff was advised that the  
24 "best way for you to be eligible to transfer facilities is to follow  
25 IMU procedures and expectations, and maintain positive behavior."  
26 ECF No. 30, Attach. 2a.

1 On June 16, 2011, Superintendent Steve Sinclair found that  
2 Plaintiff's accusation that Defendant Brodhead engaged in  
3 inappropriate sexual behavior was unsubstantiated. ECF No. 28,  
4 Attach. A. Approximately, a week earlier, Superintendent Sinclair  
5 also found Plaintiff's allegations of sexual misconduct by both  
6 Officer Coll and Defendant Belanger were unfounded. *Id.*; see also  
7 ECF No. 28, Attach. A (noting that Plaintiff voluntarily withdrew  
8 both allegations). The razorblade allegation against Defendant  
9 Brodhead was also found to be unsubstantiated.

10 On May 12, 2013, Plaintiff filed this lawsuit.<sup>1</sup> ECF No. 1. On  
11 May 15, 2013, the Court determined service of Plaintiff's 42 U.S.C. §  
12 1983 claims under the First and Eighth Amendments against Defendants  
13 Kenneth Brodhead, Linda Belanger, and Kevin Walker was appropriate.  
14 ECF No. 13.

15 Plaintiff filed his instant motion on June 10, 2013. Through  
16 his motion, Plaintiff seeks the following relief:

- 17 1) Enjoining Defendants, their co-workers, family, friends,  
18 successors in office, agents, employees, and all other  
19 persons acting in concern and participation with them to  
20 provide a safe living environment away from conflict of  
21 interest, threats, retaliation, and unnecessary suffering;
- 22 2) Enjoin these individuals from depriving him of his  
23 constitutional rights;

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24 <sup>1</sup> Plaintiff previously filed four other lawsuits in this  
25 district in March 2013: CV-13-5029-EFS, CV-13-5036-EFS, CV-13-5037-  
26 EFS, and CV-13-5038-EFS. One was voluntarily dismissed, CV-13-5029-  
EFS; one was dismissed by the Court on August 5, 2013, CV-13-5037-  
EFS. The other two lawsuits are pending.

- 1           3)     Requiring Defendants to provide him with mental health  
2           services with a provider that does not have a conflict of  
3           interest with Plaintiff; and  
4           4)     Prohibiting Defendants and their coworkers and friends,  
5           including Peter Beck, Shane Miller, Thomas Roe, Walter  
6           End, Daniel Mgaruiya, Bradley Braham, Cathy Bly, David  
7           Lundren, Santos DeLeon, Brandon Rhodes, Eric McClanahan,  
8           Kevin Todd, Joseph Goodman, Kenneth Kingsley, Calvin  
9           Blackham, and Mr. Goodenough, from being within 100 feet  
10          of Plaintiff and having verbal or written contact with  
11          Plaintiff, except for unavoidable emergencies.

12 ECF No. 16. Defendants oppose the motion, contending that Plaintiff  
13 failed to show that he is likely to succeed on the merits and that he  
14 has a history of manipulating the prison's grievance system in order  
15 to change his housing assignment. ECF No. 27. Defendants filed a  
16 declaration from Lee Young, a grievance coordinator, who stated:

17           [Plaintiff] has a pattern and practice of intentionally  
18           engaging in manipulative conduct to get attention, to  
19           elicit changes in his housing assignment, or for other  
20           purposes. He used threats of self-harm, refusing to eat,  
21           refusal to take his medications, threats of making  
22           accusations against staff, making false accusations against  
23           staff, and other similar tactics to attempt to manipulate  
24           the corrective facility processes and staff on a regular  
25           basis.

26 ECF No. 28 at 2.

**B. Standard<sup>2</sup>**

          The purpose of a preliminary injunction (PI) is to preserve the  
status quo and prevent a threatened wrong or further perpetration of  
injury until a final determination on the merits. Fed. Prac. &

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<sup>2</sup> Because Defendants appeared in this lawsuit and responded to  
the motion, the Court treats Plaintiff's motion as a preliminary-  
injunction motion, not a motion for a temporary restraining order.  
However, the Court recognizes the standards for both are similar.

1 Proc., 11A Fed. Prac. & Proc. Civ. § 2947 (2d ed.). Federal Rule of  
2 Civil Procedure 65 governs the procedure for PI requests, while case  
3 law sets forth the standards to apply to assess whether a PI should  
4 be entered.

5 To obtain a PI, Plaintiff must establish 1) he is likely to  
6 succeed on the merits, 2) he is likely to suffer irreparable harm in  
7 the absence of preliminary relief, 3) the balance of equities tips in  
8 his favor, and 4) a PI is in the public interest. *See Winter v.*  
9 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the  
10 Ninth Circuit's "sliding scale" approach, these elements are  
11 "balanced, so that a stronger showing of one element may offset a  
12 weaker showing of another." *Alliance for the Wild Rockies v.*  
13 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). "[A]t an irreducible  
14 minimum," Plaintiff "must demonstrate a fair chance of success on the  
15 merits, or questions serious enough to require litigation." *Guzman*  
16 *v. Shewry*, 552 F.3d 941, 948 (9th Cir. 2009).

### 17 **C. Analysis<sup>3</sup>**

#### 18 **1. Likelihood of Success on the Merits**

19 Plaintiff contends he is likely to succeed on his Eighth  
20 Amendment deliberate indifference and First Amendment retaliation

21  
22 <sup>3</sup> Plaintiff seeks relief based on conduct committed by  
23 individuals who are not Defendants, including Peter Beck and Walter  
24 End. Because Messrs. Beck and End are not Defendants in this  
25 lawsuit, the Court will not consider their conduct when weighing the  
26 PI factors.

1 claims because Defendants violated their own policies and practices.  
2 Defendants dispute that Plaintiff can show he is likely to succeed,  
3 especially since his grievances have been resolved through the  
4 prison's internal processes, including the kite, PREA, and grievance  
5 processes.

6 a. *Retaliation*

7 To establish a claim for retaliation in violation of Plaintiff's  
8 First Amendment right, Plaintiff must show: 1) a prison official took  
9 adverse action against him because of his protected conduct, 2) that  
10 action chilled his exercise of his constitutional rights, and 3) the  
11 action did not advance a legitimate correctional goal. *See Wood v.*  
12 *Beauclair*, 692 F.3d 1041, 1051 (9th Cir. 2012); *see also Rizzo v.*  
13 *Dawson*, 778 F.2d 527, 531-32 (9th Cir. 1985) (recognizing a prisoner  
14 has a right under the First Amendment to be free from prison  
15 transfers or reassignments made in retaliation for filing a  
16 grievance). There is no dispute that Plaintiff exercised his First  
17 Amendment free-speech right by filing grievances, kites, and PREA  
18 complaints. The dispute is whether Defendants took adverse action  
19 against him because he exercised his free-speech right and whether  
20 this action chilled Plaintiff's free speech and did not advance a  
21 legitimate correctional goal. Accordingly, the Court focuses on  
22 these disputed elements when assessing the strength of Plaintiff's  
23 retaliation claim.

24 Plaintiff contends that Defendant Brodhead retaliated against  
25 him for reporting sexual assault/harassment by providing him with a  
26 razor blade and continuing to harass and intimidate him, and that the

1 other Defendants retaliated against him by permitting Defendant  
2 Brodhead to continue to subject Plaintiff to this treatment and by  
3 denying his request for a transfer out of IMU-N. In large measure,  
4 Plaintiff's underlying grievances, kite, and PREA were found to be  
5 unsubstantiated by the prison officials. However, he did prevail on  
6 his grievance that Defendant Belanger inappropriately commented that  
7 he would "rot" in IMU-N if he failed to abide by WWSP's policies and  
8 on another grievance regarding mental health's response time.  
9 However, there is no evidence that these two substantiated incidents  
10 were motivated by the desire to retaliate against Plaintiff for  
11 exercising his free-speech right.

12 Plaintiff also claims that Defendants retaliated against him by  
13 failing to approve his transfer request. There is no dispute that  
14 Plaintiff's transfer requests have been denied; however, there is no  
15 documentation before the Court that Plaintiff has satisfied WWSP's  
16 ninety-day good-behavior requirement in order to earn a transfer.  
17 This WWSP ninety-day requirement serves the legitimate purpose of  
18 encouraging inmates to behave appropriately. Therefore, this policy  
19 is reasonably related to a legitimate penological interest. See  
20 *Turner v. Safley*, 482 U.S. 78, 85 (1987) ("[W]hen a prison regulation  
21 impinges on inmates' constitutional rights, the regulation is valid  
22 if it is reasonably related to legitimate penological interests.").

23 It may be possible for Plaintiff to prove that Defendants  
24 intentionally harassed him knowing that due to his mental health  
25 issues he would harm himself if harassed and thereby be unable to  
26 satisfy the ninety-day good-behavior requirement. However, at this

1 time, the Court finds Plaintiff has not established that he is likely  
2 to establish that Defendants took adverse action against him because  
3 he engaged in free speech. Plaintiff also has not shown that he is  
4 likely to show that Defendants' conduct had a chilling effect on  
5 Plaintiff's free-speech right. Plaintiff has persistently exercised  
6 his free-speech right since the fall of 2010 and continues through  
7 today. Therefore, based on the current record, the Court determines  
8 Plaintiff has not made a strong showing that he is likely to prevail  
9 on his retaliation claim.

10           b. *Eighth Amendment: Deliberate Indifference*

11           Plaintiff also claims Defendants have been deliberately  
12 indifferent to his medical needs. To prevail on his Eighth Amendment  
13 claim, Plaintiff needs to establish "deliberate indifference to  
14 serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).  
15 This is established by proving: 1) "a serious medical need by  
16 demonstrating that failure to treat a prisoner's condition could  
17 result in further significant injury or the 'unnecessary and wanton  
18 infliction of pain," and 2) Defendants' response to the need was  
19 deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th  
20 Cir. 2006) (internal citations omitted). "This second prong-  
21 defendant's response to the need was deliberately indifferent-is  
22 satisfied by showing (a) a purposeful act or failure to respond to a  
23 prisoner's pain or possible medical need and (b) harm caused by the  
24 indifference." *Id*

25           There is no question that Plaintiff has serious mental health  
26 issues and that cutting himself can result in a serious medical need.

1 However, there is little evidence that Defendants failed to treat his  
2 mental health conditions or respond to the physical injuries  
3 resulting from his cutting. On one occasion, it did take mental  
4 health staff two hours to visit him, which resulted in Plaintiff  
5 inflicting unnecessary and wanton pain on himself. However,  
6 Superintendent Kuzca responded to Plaintiff's grievance about this  
7 incident, apologized for the delay, and reminded staff that response  
8 times must be quicker. There is no indication that Defendants were  
9 involved in this situation, or that WWSP purposefully or deliberately  
10 failed to act. Accordingly, based on the present record, the Court  
11 finds Plaintiff failed to show that he is likely to succeed on his  
12 Eighth Amendment deliberate-indifference claim.

13 2. Likelihood of Suffering Irreparable Harm in the Absence of  
14 Preliminary Relief

15 The record before the Court pertains to Defendants' 2010 and  
16 2011 interactions with Plaintiff. There is no verified information  
17 or documentation regarding Defendants' current treatment and  
18 interaction with Plaintiff. Accordingly, it is difficult to assess  
19 whether irreparable harm will occur in the absence of preliminary  
20 relief. See *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974) ("Past  
21 exposure to illegal conduct does not in itself show a present case or  
22 controversy regarding injunctive relief . . . if unaccompanied by any  
23 continuing, present adverse effects."). In addition, it is likely  
24 that the physical and emotional harm that Plaintiff suffers is due to  
25 his own irrational self-harming behavior. Entry of the requested PI  
26



1 may not prevent Plaintiff from inflicting further self-harm given  
2 that Plaintiff inflicted self-harm before being housed at IMU-N.

3       3.     Balance of Hardships

4       The balance of hardships is difficult to assess based on the  
5 disputed record. If Defendants are intentionally "messing" with  
6 Plaintiff in order to cause him to engage in self-harm behavior and  
7 prevent him from earning ninety days of good behavior, then the  
8 resulting harm to Plaintiff is substantial. Prison officials are to  
9 engage in their responsibilities professionally and treat inmates  
10 appropriately.

11       However, if Plaintiff is filing grievances containing false  
12 accusations against prison staff, then granting preliminary-  
13 injunctive relief harms WWSP's ability to effectively operate its  
14 facility and supervise its inmates. Intruding on WWSP's ability to  
15 designate what staff can interact with Plaintiff could substantially  
16 burden the WWSP's administration. *See Turner*, 482 U.S. at 84-85  
17 ("Running a prison is an inordinately difficult undertaking that  
18 requires expertise, planning, and the commitment of resources, all of  
19 which are peculiarly within the province of the legislative and  
20 executive branches of government."). Therefore, at this time, the  
21 Court finds the balance of equities is neutral.

22       4.     Public Interest

23       The public has an interest in ensuring that prison officials  
24 abide by the law and professionally treat inmates. The public also  
25 has an interest in ensuring that prisons have the ability to  
26

effectively operate prisons. Based on the present record, the Court finds this factor is also neutral.

**D. Conclusion**

After considering the PI factors, the Court determines Plaintiff fails to establish the necessity for a PI at this time. At the hearing, the Court ordered Defendants to file a status report as to: 1) whether Plaintiff is available for a transfer at this time and, if not, why is Plaintiff not available for a transfer; 2) the longest duration that Plaintiff has been infraction free at WWSP and the identified time frame for that duration; 3) what is WWSP's video retention policy since 2010; and 4) whether videos during the time period relevant to this lawsuit contain audio.

For the above given reasons, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction, **ECF No. 16**, is **STRICKEN** (TRO) and **DENIED IN PART** (PI).

2. Defendants shall file the above-identified status report no later than August 26, 2013.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to Mr. Troupe and counsel.

**DATED** this 20<sup>th</sup> day of August 2013.

s/ Edward F. Shea  
EDWARD F. SHEA  
Senior United States District Judge